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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 98-121
BellSouth Long Distance, Inc., for	)	
Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

REPLY COMMENTS OF BELL ATLANTIC[1] ON PETITIONS FOR RECONSIDERATION AND CLARIFICATION

The comments and oppositions of the long distance companies reflect their continuing efforts to impose new and onerous requirements – requirements that are found nowhere in the Act – on Bell companies seeking authorization to provide in-region long distance service. The Commission should reject these transparent ploys to protect the long distance oligopoly from meaningful competition.

1. The Commission should affirm its sensible approach to future applications.

The long distance companies take issue with the Commission's determination that, in future section 271 applications, BellSouth may incorporate by reference its showing of checklist compliance for items that the Commission has found BellSouth satisfies. *E.g.*, CompTel Opposition at 10-11; Sprint Petition at 2-5. The long distance companies'

[1] The Bell Atlantic telephone companies (Bell Atlantic) are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

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patent motivation is to erect as many roadblocks as possible in the path of section 271 applications.

The Commission's approach, which recognizes that there is no point in relitigating an issue that has been joined and decided, but which allows opponents to present new information that should be considered, strikes an appropriate balance and will conserve resources of all involved. The Commission should reaffirm the approach set out in its Order.[2]

2. The Commission should reject the long distance companies' attempts to impose new requirements on Track A. The long distance companies argue that the Commission should establish new Track A requirements that are found nowhere in the Act. For example, Sprint asserts that evidence that consumers are substituting PCS for a second wired line cannot qualify under Track A. *See* Sprint Opposition at 8. But the Act contains no requirement that carriers must win a customer's entire account, or its primary line, to qualify under Track A. Indeed, the long distance companies themselves have argued that their market entry strategy involves "splitting accounts" – that is, persuading customers to shift some of their lines to the competing carrier, while leaving others with the Bell company. *See* Order, ¶¶ 142-43. This is precisely the equivalent of substituting PCS for a second wired line. While the long distance companies clearly would like to be able to enter the local market without allowing Bell companies to enter the long distance market, that scheme is flatly contrary to the Act.

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[2] *Application of BellSouth for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, ¶ 58 (rel. Oct 13, 1998) ("Order").

As another example, AT&T implies that PCS cannot qualify under Track A unless it is a "competitive alternative to most, if not all, telephone users." AT&T Opposition at 3. Under AT&T's view, carriers that choose to enter the market by targeting a particular segment of customers could not qualify as Track A carriers. Again, however, the Act contains no such limitation. It merely requires the presence of one or more unaffiliated providers to business and residential subscribers – it does not require that they offer service to some minimum number or subset of such subscribers. *See* 47 U.S.C. §271(c)(1)(A).

Finally, MCI WorldCom and KMC argue that the fact that AT&T advertises its PCS service as a substitute for wireline service provides no evidence that PCS is a viable alternative to wireline service. KMC Opposition at 4; MCI WorldCom Opposition at 4. Yet under a classic antitrust analysis, substitutability must be looked at from the perspective of both suppliers and purchasers. AT&T's ads go directly to the perceived substitutability of PCS for wireline service from the suppliers' perspective, and may also provide evidence of substitutability from the purchasers' perspective, if customers are buying PCS in response to the ads. Moreover, if a Bell company has met the checklist, and entered into an interconnection agreement with a competing carrier (whether PCS or other) that has entered the local market portraying its service as a substitute for the Bell company's service, then the Bell company's section 271 application cannot be held hostage to the success or ineptness of the competing carrier's marketing and advertising efforts. Again, that would impose conditions on the Act's Track A requirement that Congress did not.

3. The Commission should not require electronic "recombinations" of network elements. In its comments, the Competitive Telecommunications Association asks the Commission to "order BellSouth to provide electronic separation and combination of elements through the 'recent change' functionality of BellSouth's switches." CompTel Comments at 2. CompTel is requesting that BellSouth be required to provide access to network elements that have been "virtually" – but not actually – unbundled. CompTel's request is sham unbundling and flatly inconsistent with the 8th Circuit's order.

The court's decision overturned the Commission order that allowed competing carriers to purchase a complete package, or "platform," of pre-combined elements at unbundled element prices. The court held that the Act's unbundling provision, section 251(c)(3), "does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4) between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other." *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) ("*Rehearing op.*"). *See also MCIMetro Access Transmission Services, Inc. v. GTE Northwest, Inc.*, Docket No. C97-742WD, slip op. at 7-8 (W.D. Wash. July 7, 1998)

In addition, the court reaffirmed its earlier decision that an FCC rule requiring local exchange carriers to recombine unbundled elements on behalf of competing carriers "cannot be squared with the terms of subsection 251(c)(3)." *Rehearing op.* at 813.

According to the court, the last sentence of section 251(c)(3) – which says that "[a]n incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements" – "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Id.* And the court further clarified – by vacating an FCC rule that barred local exchange carriers from "separat[ing] requested network elements that the incumbent LEC currently combines," 47 C.F.R. § 51.315(b) – that the Act only requires local exchange carriers to provide access to individual network elements that have been physically unbundled from one another. *Rehearing op.* at 813.

CompTel's request for "virtual" or "electronic" rebundling is flatly inconsistent with the Act because it would require BellSouth to deliver network elements in a preassembled form. CompTel is asking that BellSouth be required to turn off the local switch port before provisioning a platform of network elements to a competing carrier and then allow the carrier to turn back on the local switch port in the preassembled platform of network elements. This so-called "electronic separation and recombining" of network elements that CompTel requests can only occur where the network elements are already physically connected to each other. Competing carriers would not physically combine the elements themselves, but would instead simply "deactivate" and "reactivate" those elements on a "virtual" or "electronic" basis. *See* CompTel Opposition at 4 ("[r]ecent change is . . . used to re-activate the same loops when a new customer orders service at that location, all without any physical disconnection of the loop and port"). CompTel is therefore asking for a physically assembled platform of combined

network elements, and the 8th Circuit has already ruled that the Act does not permit competing carriers to do so.

CompTel's request cannot be justified on the ground that "unbundling" does not mean physical separation of network elements, but simply separate pricing of the elements. The Act requires incumbent carriers to provide "access to network elements on an unbundled basis at any technically feasible point . . . ." 47 U.S.C. § 251(c)(3). The point of access referenced in the statute is a physical point where the requesting carrier can connect its own element or connect another one of the incumbent's elements. Such access would be unnecessary if "unbundling" simply meant separate pricing. In order to give meaning to this provision, as required by rules of statutory construction, the term "unbundle" must be read to mean physically sever.

In fact, just last year, the Commission itself used the word "unbundle" as a synonym for "physically sever:" "Although we conclude that shared transport is *physically severable* from switching, incumbent LECs may not *unbundle* switching and transport facilities that are already combined, except upon request by a requesting carrier." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Order on Reconsideration, 12 FCC Rcd 12460, ¶ 44 (1997).

Moreover, any attempt by the Commission to prescribe particular methods of access to unbundled network elements would undermine the efforts of state commissions. For example, the New York Public Service Commission recently concluded a proceeding concerning methods for network element recombination. In that proceeding, the Commission "adopt[ed] every technically feasible method available today for competitive LECs to access element combinations to provide service." *Proceeding on Motion of the*

Commission to Examine Methods by Which Competitive Local Exchange Carriers can Obtain and Combine Unbundled Network Elements, Case Nos. 98-C-0690, 95-C-0657, Opinion No. 98-18 at 39 (NY PSC Nov. 23, 1998). Significantly, the Commission did not require Bell Atlantic - New York to allow competitors to "recombine" network elements electronically. *Id.* at 35-36.

In the end, virtual rebundling is just resale by another name. It obliterates the careful distinction Congress drew between the different methods of entry into local markets. And it destroys any incentive for carriers to invest in competing network facilities.

4. The Commission should not require BellSouth to provide reciprocal compensation billing information to carriers that do not incur additional costs to complete local calls. Several carriers argue that an incumbent carrier should be required to provide reciprocal compensation billing information to carriers even where those carriers are not entitled to collect reciprocal compensation. This argument is patently absurd.

An incumbent carrier's duty to provide billing information extends only to where the new entrant needs that information to bill for its services. Conversely, where the new entrant has no right to bill for its services, there is no reason for the incumbent to supply any billing information.

For example, a carrier is entitled to collect reciprocal compensation for terminating local calls only for "the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(A)(ii). If a new entrant uses the incumbent's local switching network element to terminate local calls, but does not pay any additional rates for doing so, it has not incurred any additional costs to terminate local calls. It therefore has no right to

collect reciprocal compensation for those calls. And the incumbent has no duty to supply reciprocal compensation billing information in this context. The Commission should reject the long distance companies' attempts to add such a requirement to the Act.

5. MCI WorldCom's attempt to require the adoption of performance standards and enforcement mechanisms should be rejected. MCI WorldCom asserts that the Commission is "required," as part of its public interest inquiry, to ensure that there are "robust performance standards for each function" in place, "backed by self-executing remedies sufficiently severe to give BOCs the incentive to meet the standards." MCI WorldCom Opposition at 17. MCI WorldCom is wrong.

The 1996 Act establishes a process of negotiation, with arbitration by state commissions if necessary, for carriers to set the terms and conditions governing interconnection of their networks, purchase of services for resale, and access to unbundled network elements. 47 U.S.C. §252. This is the process that must be used to establish performance measures and standards.[3] The Commission may not impose such requirements through the "back door" of the public interest inquiry. Accordingly, the Commission should reject MCI WorldCom's attempt to mandate a new checklist requirement and should instead reaffirm the statement in the Order that "the presence or absence of any one factor would not dictate the outcome of the public interest inquiry,"

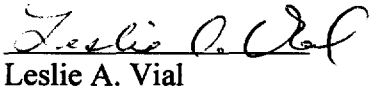
[3] The Commission does not have authority to adopt mandatory performance measurements, standards, or enforcement mechanisms. Under the Communications Act of 1934, as amended, jurisdiction over the intrastate provision of telecommunications services, including services to competing carriers, belongs to the states. 47 U.S.C. §152(b).

Order, ¶ 362, and "that such factors are not preconditions to BOC entry into the in-region, interLATA market," *id.*, n. 1136.

CONCLUSION

The Commission should reject the attempts of the long distance companies to impose new requirements – found nowhere in the statute – on Bell companies seeking authorization pursuant to section 271of the Act.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of December, 1998, a copy of the foregoing "Reply Comments of Bell Atlantic on Petitions for Reconsideration and Clarification" was sent by first class mail, postage prepaid, to the parties on the attached list.

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